

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Plaintiff in Error,
vs.

ONE KISSEL TOURING AUTOMOBILE, and
SAN FRANCISCO SECURITIES COR-
PORATION,
Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the District of Arizona.

FILED

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F. B. MONTGOMERY

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Circuit Court of Appeals
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Agreed Statement of Facts.....	17
Answer and Claim of San Francisco Securities Corporation	13
Assignment of Errors	25
Attachment and Monition	10
Certificate of Clerk U. S. District Court to Transcript of Record	35
Citation on Writ of Error (Original).....	39
Citation on Writ of Error (Copy).....	32
Judgment	24
Libel	1
Minutes of Court — April 16, 1923 — Order Allowing Time to File Brief, etc.....	5
Minutes of Court—May 9, 1923—Judgment...	24
Minutes of Court — May 9, 1923 — Order Dismissing Libel	23
Names and Addresses of Attorneys of Record.	1
Notice of Hearing on Attachment and Monition	8
Opinion and Order Dismissing Libel.....	19
Order Allowing Time to File Brief, etc.....	5
Order Allowing Writ of Error.....	28
Order Dismissing Libel	23

Index.	Page
Order of Publication	12
Petition for Writ of Error	27
Praecipe for Transcript of Record.....	33
Return to Writ of Error (Copy).....	31
Return to Writ of Error (Original).....	38
United States Marshal's Return on Attach- ment and Monition	6
Writ of Error (Copy).....	29
Writ of Error (Original).....	37

Names and Addresses of Attorneys of Record.

FREDERICK H. BERNARD, Esq., United States Attorney,

JOHN W. WALKER, Assistant United States Attorney, Tucson, Arizona,
Attorneys for Plaintiff in Error.

Messrs. KINGAN, CAMPBELL & CONNER, Tucson, Arizona,
Attorneys for Claimant, San Francisco Securities Corporation, Defendant in Error. [1*]

[1*]

In the District Court of the United States, for the District of Arizona.

No. 336-LAW—TUCSON.

UNITED STATES OF AMERICA

vs.

ONE KISSEL TOURING AUTOMOBILE.

Libel.

Comes now Frederick H. Bernard, United States Attorney for the District of Arizona, who, for the United States in this behalf, prosecutes, and respectfully represents and informs the Court:

That heretofore, and on or about the 22d day of October, A. D. 1922, in the county of Pima, State and District of Arizona, John A. Toomey, who was

*Page-number appearing at foot of page of original certified Transcript of Record.

then and there a Narcotic Inspector, did arrest one P. P. Means, *alias* Frank Mazzy, and did seize a certain Kissel Touring Automobile, Serial 470, Model 45, engine number 90414, bearing Arizona 1922 license 3-275, and a certain package, which said package contained approximately one grain of cocaine, the said cocaine being a derivative of cocoa leaves.

That said package and containers did not bear the Internal Revenue stamps required by law, and your informer alleges that the Internal Revenue tax imposed by law upon said cocaine, and required by law to be evidenced by a stamp placed on each package containing an ounce or fraction of an ounce of cocaine, had never been paid to the United States of America.

Your informant further alleges that at and just prior to the time of said seizure of said narcotics and said automobile, and the arrest of the said P. P. Means, *alias* Frank Mazzy, the said P. P. Means, *alias* Frank Mazzy was transporting the said narcotics in said automobile; that he, the said P. P. Means, *alias* Frank Mazzy had removed the said narcotics from some point in the District of

2

Arizona, to your informant unknown, to a point near the intersection of Council and Church Streets, in the city of Tucson, in the District of Arizona, for the purpose of making a sale and delivery of said narcotics, and that said removal as aforesaid for the purpose aforesaid, [2] was effected by transporting the same in the said Kissel touring

automobile, and that the said narcotics were removed as aforesaid, with the intent on the part of him, the said P. P. Means, *alias* Frank Mazzy, to defraud the United States of the taxes which were then and there imposed by law on said narcotics.

Your informant further alleges that the said P. P. Means, *alias* Frank Mazzy was then and there a person who sold, dealt in, dispensed and gave away opium and coca leaves, and the derivatives thereof, and that he was not then and there registered with the Collector of Internal Revenue for the District of Arizona as a wholesale or retail dealer, and that he had not paid the special tax required by law to be paid by such dealers; and your informant alleges that he was then and there a person who was required to register and pay such special tax.

That the said P. P. Means, *alias* Frank Mazzy was at the time of the seizure of said automobile, using and employing the same in carrying on his business of selling, dealing in, dispensing and giving away opium, coca leaves, and the derivatives thereof, not in and from the original stamped packages, and on which the stamp required by law had not been paid, and without having registered and paid the special tax as required by law of dealers. That he was then and there using said automobile as a means of removal, and a place in which to deposit and conceal the nontax paid narcotics so unlawfully sold, dealt in, dispensed and given away by him, in fraud of the revenues of the United States.

Your informant alleges that said automobile is now in the custody of John A. Toomey, Narcotic Inspector as aforesaid, who holds the same as for-

3

feited to the use of the United States by virtue of the terms and provisions of Section 3450 of the Revised Statutes of the United States.

That the said automobile is of the reasonable market value of approximately Fourteen Hundred Dollars. [3]

That your informant is advised, and here alleges, that said automobile was, at the time of its seizure, the property of one Monte Mansfeld, and was in the charge of the said P. P. Means, *alias* Frank Mazzy, who was driving and using said car for the unlawful purpose aforesaid.

WHEREFORE, for the reasons and causes aforesaid, your informant says, that said automobile became forfeited to the use of the United States, and your informant respectfully prays that due process and monition of this Court be awarded in this behalf to enforce said forfeiture, and that all persons, firms and corporations interested in said automobile be cited to answer in special and general the premises; and that due proceedings having been had thereon, the said automobile, for the causes aforesaid, and others appearing, be condemned by the definite sentence and decree of this Court as forfeited to the use of the United States, and that the same be ordered sold by the Marshal,

and the proceeds thereof applied in manner and form as is by law in such cases made and provided.

FREDERIC H. BERNARD,
United States Attorney.

[Endorsements]: Petition. Filed Mar. 14, 1923. United States District Court for the District of Arizona. C. R. McFall, Clerk. By Earl T. Cox, Deputy Clerk. [4]

November, 1922, Term—Tucson Division.

In the District Court of the United States, District of Arizona.

Honorable M. T. DOOLING, United States District Judge for the Northern District of California, Specially Assigned, Presiding:

Minute Entry of April 16, 1923.

No. L.-335—(TUCSON).

UNITED STATES OF AMERICA,
Plaintiff,
vs.

ONE KISSEL TOURING AUTOMOBILE.

Minutes of Court—April 16, 1923—Order Allowing Time to File Brief, etc.

IT IS ORDERED that the claimant herein be allowed five days within which to file his brief and the United States five days thereafter in which to answer. [5]

In the District Court of the United States for the
District of Arizona.

No. 336—LAW—TUCSON.

UNITED STATES OF AMERICA

vs.

ONE KISSEL TOURING AUTOMOBILE.

**United States Marshal's Return on Attachment
and Monition.**

I received the within writ at Phoenix, Arizona, March 16, 1923, and executed the same as follows:

On March 16, 1923, by writing a personal letter to J. A. Toomey, Narcotic Inspector for the District of Arizona, informing him that the automobile above described is attached in his possession, and directing him to detain the same in his custody until the further order of the Court respecting the same.

On March 17, 1923, at Tucson, Arizona, by posting at three conspicuous places in the city of Tucson, Arizona, a typewritten copy of a Notice of Hearing setting forth that this case would be called for hearing before the United States District Court at Tucson, Arizona, on the 16th day of April, 1923, at 10 o'clock A. M. (if that be a day of jurisdiction, and if not, then on the next day of jurisdiction thereafter at 10 o'clock in the forenoon of that day) and directing all persons claiming any right, title or interest in or to the property above described, to wit: one Kissel Touring Automobile, heretofore seized within the District of Arizona,

for reasons and causes mentioned in a certain information filed in that behalf, in Case No. 336—Law—Tucson in said court; and to all persons knowing or having anything to say why the Court should not pronounce against the same for the condemnation thereof, according to the prayer of the libel filed in this case, that they be and appear before the said District Court upon the date above mentioned, then and there to interpose a claim to said property and to make their allegations in that behalf.

I further executed this writ at Tucson, Arizona, by causing to be published in the "Arizona Daily Star," a newspaper published in the city of Tucson, Arizona, a copy of the above-described notice of hearing. Said notice was published in said newspaper on March 20th and March 27th, 1923.

An affidavit of publication, signed by J. F. Carmichael, cashier of the State Consolidated Publishing Company, publisher of the "Arizona Daily Star," setting forth the dates and facts, under oath, with regard to such publication, properly signed and sworn to, is hereto attached and made a part of this return.

T. J. SPARKES,
United States Marshal.
By W. P. McNair,
Deputy.

This 16th day of April, 1923. [6]

In the District Court of the United States for the
District of Arizona.

No. 336—LAW—TUCSON.

UNITED STATES OF AMERICA

vs.

ONE KISSEL TOURING AUTOMOBILE.

Notice of Hearing on Attachment and Monition.

Pursuant to warrant of attachment and monition issued out of the District Court of the United States for the District of Arizona, under the seal of that court, and dated March 14, 1923, and directed to me, public notice is hereby given to all persons claiming certain property, to wit: one certain Kissel Touring Automobile heretofore seized on land within the said District of Arizona, for reasons and causes mentioned in a certain information filed in that behalf in the case entitled United States of America *versus* One Kissel Touring Automobile, being Cause No. 336—Law—Tucson, in said court.

The said property was seized as aforesaid having been by me attached in the custody of John A. Toomey, Narcotic Agent for the District of Arizona, and being now detained in my custody within the said District of Arizona by order of the said Court.

And to all persons knowing and having anything to say why said Court should not pronounce against the same for the forfeiture thereof, ac-

according to the prayer of said information, and that they be and appear before the said court to be holden in and for the said District of Arizona in the United States courtroom in the city of Tucson, in the same district, on the 16th day of April, A. D. 1923, at 10:00 o'clock A. M. (if that be a day of jurisdiction, and if not, on the next day of jurisdiction thereafter at 10 o'clock in the forenoon of that day), the same being return day of the warrant aforesaid, and day of trial of said seizure and information, then and there to interpose a claim to the said property, and to make their allegations in that behalf.

T. J. SPARKES,

United States Marshal for the District of Arizona.

F. H. BERNARD,

United States Attorney.

This 16th day of March, 1923. [7]

In the District Court of the United States for the
District of Arizona.

No. 336—LAW—TUCSON.

UNITED STATES OF AMERICA

vs.

ONE KISSEL TOURING AUTOMOBILE.

Attachment and Monition.

The President of the United States to the United States Marshal for the District of Arizona,
GREETING:

WHEREAS, a libel of information and forfeiture has been filed in the District Court of the United States for the District of Arizona, on the 14th day of March, A. D. 1923, by the United States of America, against one certain Kissel Touring Automobile, which said automobile is in the present custody and possession of one John A. Toomey, Narcotic Inspector of the United States, for the District of Arizona, claimed as forfeited to the United States for having been unlawfully used in transporting and dealing in narcotics contrary to law, and for causes and reasons in said libel mentioned, and praying for usual monition of said court in that behalf to be made, and that all persons interested in said automobile may be cited in general and in special to answer the premises, and all proceedings being had, that the said automobile for the causes and libel mentioned, be condemned and sold to pay the demands of the libellant.

YOU ARE HEREBY COMMANDED, to attach the said Kissel Touring Automobile hereinabove described, and detain the said automobile in your custody until the further order of this Court respecting the same, and to give due notice to all persons claiming the same, or known to have or having anything to say why said [8] automobile

should not be condemned and sold pursuant to the prayer of said libelant, and that they be and appear before the said court to be held in and for the District of Arizona, at Tucson, Arizona, on the 16th day of April, A. D. 1923, at ten o'clock in the forenoon of said day, if the same be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf.

What you shall have done in the premises do you then and there make return thereof, together with this writ.

WITNESS the Honorable WILLIAM H. SAWTELLE, Judge of the District Court of the United States for the District of Arizona, at the courtroom in the city of Tucson, in said District, this 14th day of March, A. D. 1923, and in the Independence of the United States the one hundred and forty seventh.

[District Court Seal]

C. R. McFALL,
Clerk.

[Endorsements]: Attachment and Monition. Filed Apr. 17, 1923. United States District Court for the District of Arizona. C. R. McFall, Clerk. By R. C. McAllaster, Deputy Clerk. [9]

In the District Court of the United States for the
District of Arizona.

No. 336—LAW—TUCSON.

UNITED STATES OF AMERICA

vs.

ONE KISSEL TOURING AUTOMOBILE.

Order of Publication.

The United States Attorney for the District of Arizona, having filed a libel of information and forfeiture in the above-entitled cause, it is now, by the Court,—

ORDERED that the usual attachment and monition be issued, directed to the United States Marshal for the District of Arizona, to seize the said Kissel Touring Automobile in said libel described, and the Court hereby fixes the 16th day of April, A. D. 1923, at ten o'clock in the forenoon, in the United States courtroom, at Tucson, Arizona, as the time and place for the hearing and trial upon said libel and information, and the Marshal is hereby directed to give notice of the time and place of said hearing, by giving the substance of such libel, with the order of Court thereon, setting forth the time and place for trial, to be inserted in some newspaper at or near the place of seizure in the said District of Arizona, once a week for two consecutive weeks, and by posting the same in the most public manner at Tucson, and vicinity for

the space of fourteen days next preceding the time fixed for said hearing and trial.

Done in open court this 14th day of March, A. D. 1923.

WM. H. SAWTELLE,
District Judge.

[Endorsements]: Order. Filed Mar. 14, 1923. United States District Court for the District of Arizona. C. R. McFall, Clerk. By Earl T. Cox, Deputy Clerk. [10]

In the District Court of the United States for the
District of Arizona.

No. 336-LAW—(TUCSON).

UNITED STATES OF AMERICA

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,

Claimant.

**Answer and Claim of San Francisco Securities Cor-
poration.**

Comes now San Francisco Securities Corpora-
tion, a corporation organized under and by virtue
of the laws of the State of California and doing
business in the State of Arizona, and files this its
answer and claim in the above-entitled matter and
admits, denies and alleges as follows:

I.

Admits upon information and belief that on or about the 22d day of October, 1922, in the county of Pima, State and District of Arizona, John A. Toomey, who was then and there a narcotic inspector, did seize a certain Kissel touring automobile serial 470, Model 45, Engine No. 90414, bearing Arizona 1922 license 3-275, and that said automobile is now in the custody of the said John A. Toomey, Narcotic Inspector, who holds said automobile claiming the same to be forfeited to the United States by virtue of the terms and provisions of Section 3450 of the Revised Statutes of the United States.

II.

Admits that said automobile is of the reasonable value of Fourteen Hundred Dollars (\$1400.00).

III.

San Francisco Securities Corporation has no knowledge or information sufficient upon which to form a belief relative to the other allegations contained in the libel or information heretofore filed in the above-entitled matter by Frederick H. Bernard, United States Attorney for the District of Arizona, and [11] therefore, denies each and every of said allegations; and further answering says: that if so it be that said automobile was used for the purposes set forth in said libel or information, such use thereof was without the knowledge or consent of the San Francisco Securities Corporation; alleges: that if so it be that said automobile was used for the purposes set forth in said libel or information, such use thereof did not and does not

constitute a violation of Paragraph 3450 of the Revised Statutes of the United States.

IV.

Said San Francisco Securities Corporation denies that said automobile became forfeited to the use of the United States.

V.

San Francisco Securities Corporation further alleges that on or about October 4, 1922, one Monte Mansfeld, being then and there the owner of said Kissel automobile, entered into a conditional sales contract in writing for the sale thereof to the said P. P. Means, *alias* Frank Mazzy, also known as Frank Means, and on said 4th day of October, 1922, for value received in the usual course of business the said Monte Mansfeld sold and assigned said conditional sales contract to San Francisco Securities Corporation; that said conditional sales contract, with the assignment thereof to the San Francisco Securities Corporation endorsed thereon, was filed for record in the office of the county recorder of Pima County, Arizona, on October 5, 1922; that of the purchase price provided by the terms of said conditional sales contract to be paid by the said Means there was unpaid at the time of the seizure of said automobile, and is still unpaid, the sum of Eight Hundred Sixty-six Dollars (\$866.00), and that by reason of the nonpayment of the installments of said purchase price as required by said conditional sales contract San Francisco Securities Corporation [12] is now the owner of and entitled to the possession of said automobile.

WHEREFORE, San Francisco Securities Corporation prays that this Honorable Court order that said Kissel touring automobile be released and discharged, and delivered to San Francisco Securities Corporation.

KINGAN, CAMPBELL & CONNER,

Attorneys for Claimant.

State of Arizona,

County of Pima,—ss.

Lautaro Roca, having been first duly sworn, on oath deposes and says: That he is agent of San Francisco Securities Corporation and makes this affidavit as such agent of said corporation for and on its behalf; that he has read the foregoing answer and claim, and is familiar with the contents thereof, and that the same is true of his own knowledge except as to the matters and things therein alleged on information and belief, and that as to such matters and things he believes it to be true.

LAUTARO ROCA.

Subscribed and sworn to before me this 16th day of April, 1923.

[Seal]

HELEN M. CLARKE,

Notary Public, Pima County, Arizona.

(My commission expires Oct. 2, 1926.)

[Endorsements]: Answer and Claim of San Francisco Securities Corporation. Filed Apr. 16, 1923. United States District Court for the District of Arizona. C. R. McFall, Clerk. By Agnes Borrego, Deputy Clerk. [13]

In the District Court of the United States for the
District of Arizona.

No. 336—LAW—(TUCSON).

UNITED STATES OF AMERICA

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,

Claimant.

Agreed Statement of Facts.

It is hereby agreed and stipulated by and between Frederick H. Bernard, United States Attorney, and Kingan, Campbell and Conner, representing the San Francisco Securities Company, that the facts in the above-entitled case are substantially as follows:

That one Frank Means, *alias* Frank Mazzy, on the 22d day of October, A. D. 1922, sold to a female drug addict two capsules of cocaine at No. 445 West Congress Street, in Tucson, Arizona. The said two capsules of cocaine were delivered to the addict on a call by the said Frank Means, *alias* Frank Mazzy, he driving to the house of said addict at the above number in a Kissel Touring Car, bearing Arizona license number 3-275. Later the same evening the said Frank Means, *alias* Frank Mazzy, attempted to make another delivery of narcotics to the same addict at the corner of Council and Church Streets, in said city of Tucson, Arizona. The said Means, *alias* Mazzy, drove up to the cor-

ner in said Kissel Touring Car above described, honked his horn, and the addiet to whom delivery was to be made came from the shadow to receive the narcotics, when officers rushed out and arrested the said Means, *alias* Mazzy. Said Means, *alias* Mazzy, attempted to swallow the capsules of narcotics on the approach of the officers, but was prevented from so doing. He was at said time driving said Kissel Touring Automobile, bearing Arizona license number 3-275, serial number [14] 370, model 45, engine number 90414, being the same car in which said former delivery had been made.

Said Means, *alias* Mazzy, was indicted by the Grand Jury of this district on February 16, 1923, for violation of Section 1, Act of December 17, 1914, as amended by the Act of February 24, 1919, having possession and selling cocaine, to which indictment he entered his plea of "guilty," and was sentenced by the Court to serve four months in the Pima County jail.

The San Francisco Securities Corporation has the interest in said Kissel automobile claimed by it in its answer and claim filed herein and had no knowledge of any unlawful use thereof.

That in delivering and attempting to deliver narcotics as aforesaid, the said Frank Means, *alias* Frank Mazzy, carried such narcotics upon his person, he being at the time within said Kissel automobile.

JOHN W. WALKER,
Asst. United States Attorney,
KINGAN, CAMPBELL & CONNER,
Attorneys for Claimant.

[Endorsements]: Agreed Statement of Facts.
Filed Apr. 21, 1923. United States District Court
for the District of Arizona. C. R. McFall, Clerk.
By R. C. McAllaster, Deputy Clerk. [15]

In the District Court of the United States for the
District of Arizona.

No. L.-336—TUCSON.

THE UNITED STATES OF AMERICA

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,

Claimant.

Opinion and Order Dismissing Libel.

FREDERICK H. BERNARD, Esq., United States
Attorney, and JOHN W. WALKER, Esq., As-
sistant United States Attorney, Attorneys for
the United States.

KINGAN, CAMPBELL & CONNER, Attorneys
for Claimant.

One P. P. Means was arrested while in an auto-
mobile of the value of \$1400.00 when about to de-
liver unlawfully an unstamped capsule containing
one grain of cocaine which he had transported in
the automobile to the place of delivery. The co-
caine and automobile were seized and Means was
arrested. Upon indictment for the unlawful deal-
ing in narcotics he pleaded guilty and was sentenced

to jail. The Government then filed this libel asking that the automobile be forfeited under Section 3450, R. S., for the reason that Means used it in removing the unstamped cocaine with intent to defraud the Government of the taxes then and there imposed by law thereon and also as a place of deposit and concealment with the same intent. The taxes in question amounted to one cent, being the tax imposed by the Harrison Act of one cent an ounce or fraction thereof, to be paid by the importer, manufacturer, producer or compounder, and to be represented by appropriate stamps affixed to the bottle or other container. The automobile belongs to San Francisco [16] Securities Corporation and was in the possession of Means under a conditional sales contract upon which the sum of \$866.00 is still due. Means was engaged in the unlawful business of selling narcotics and had already, on the day of his arrest, delivered two similar capsules, transporting them in the automobile to the place of delivery. In each instance the capsules were concealed on the person of Means, he being within the automobile.

Section 3450, R. S., declares forfeited any vehicle used in the removal or for the deposit or concealment of any article upon which a tax is imposed, when such vehicle is so used with intent to defraud the United States of such tax. The effect of this statute in a case identical with the present one was considered by Judge Cushman in the cases of *U. S. vs. One Ford Truck* and *U. S. vs. One Touring Car*, 285 Fed. 204. He held that the words removal and

removed as used in Section 3450 are not synonymous with transportation or transported, but have reference to the removal from some definite place where the tax imposed is due and where it should be paid before the taxed articles are taken therefrom. With this construction of the statute I entirely agree, and there is nothing in the facts of this case to show such removal. He also held that the unstamped drugs when in the pocket of the driver of the automobile were neither deposited nor concealed in the automobile within the meaning of the statute, his decision in that regard being as follows:

“The narcotics described in these informations were not in any sense ‘concealed’ in the automobile, but they were ‘concealed’ upon the person of the driver as would be a ‘concealed’ weapon. The automobile was not the place of ‘deposit’ of the narcotics in either case, but the narcotics were placed or ‘deposited’ in the pocket of the driver and he then got into the automobile. No fair construction of the word ‘deposit’ would describe such an act.” [17]

I am not sure that being “concealed” and “deposited” in the pocket of the driver, he being in the automobile, the narcotics may not well be said to be concealed and deposited in the automobile as well. But it requires more to warrant the forfeiture of the automobile than the deposit or concealment with intent to defraud the United States of the tax imposed on them, and the burden is upon the Government to show that such was the intent. Means, the driver of the car, was, so far as ap-

pears, neither importer, manufacturer, producer or compounder of the drugs, nor connected in any way with any of them. The tax was not due from him, nor would he have been permitted to pay it. His possession of the drugs was unlawful, and if he disclosed such possession for the purpose of offering to pay the tax, he would subject himself to arrest and the drugs and automobile to seizure. His concealment of the drugs is to be attributed, in my judgment, to the fact that he knew that he was engaged in an unlawful business rather than to the fact that he was trying to evade the payment of a tax of one cent. It should be a clear case which would warrant the forfeiture of an automobile valued at \$1400.00, and belonging to one not connected with the transaction, for the failure on the part of some one unknown to pay to the Government a one cent tax. The difficulties of cases like the present would be obviated if Congress would make the vehicle subject to forfeiture for the transportation therein of narcotics upon which the tax had not been paid. But Congress has not so done, and the trouble here arises from an endeavor to fit a law passed in 1866 to delinquencies created by the Harrison Act over fifty years later. Nothing stated herein applies or is intended [18] to apply to forfeitures, under the National Prohibition Act, for the unlawful transportation of intoxicating liquor.

The libel will be dismissed.

May 9th, 1923.

M. T. DOOLING,
Judge.

[Endorsements]: Opinion and Order Dismissing Libel. Filed May 9, 1923. United States District Court for the District of Arizona. C. R. McFall, Clerk. By Agnes Borrego, Deputy Clerk. [19]

May, 1923, Term—Tucson.

In the District Court of the United States for the
District of Arizona.

Honorable M. T. DOOLING, United States District
Judge for the Northern District of California,
Specially Assigned, Presiding.

Minute Entry of May 9, 1923.

No. L-336—(TUCSON).

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,

Claimant.

**Minutes of Court—May 9, 1923—Order Dismissing
Libel.**

The claim of the San Francisco Securities Corporation, claimant herein, for the return of the automobile seized in this case, having been heretofore submitted to the Court, and by the Court taken under advisement, and the Court having fully considered the same,

IT IS NOW ORDERED that the claim of the said San Francisco Securities Corporation be, and the same is hereby granted, and that the automobile seized herein be released and returned to said claimant, and the libel against said automobile be dismissed.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORATION,

Defendants.

Minutes of Court—May 9, 1923—Judgment.

This matter coming on regularly to be heard on this 9th day of May, A. D. 1923, F. H. Bernard, Esq., United States Attorney, [20] and John W. Walker, Esq., Assistant United States Attorney, appearing for the plaintiff, and Kingan, Campbell and Conner appearing as attorneys for the claimant, the San Francisco Securities Corporation; the case was submitted to the Court for its consideration and decision, upon an agreed statement of the facts, a copy of which is filed in this matter. The Court having fully considered the matter does find that the claimant is entitled to a return of the automobile as prayed for in its petition, and it is therefore

ORDERED, ADJUDGED and DECREED that the petition of claimant, the San Francisco Securi-

ties Corporation, to have returned to it one certain Kissel Touring Automobile be and the same is hereby allowed, and the libel filed herein dismissed, and the automobile in question ordered returned to the claimant, the San Francisco Securities Corporation upon the payment of all necessary costs incurred by the Government for storage. [21]

In the District Court of the United States for the
District of Arizona.

No. L.-336—TUCSON.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,
Defendants.

Assignment of Errors.

Comes now the United States of America, plaintiff in the above-entitled matter, and files the following assignment of errors, upon which it will rely upon its appeal from the decree made by this Honorable Court, on the 9th day of May, 1923, in the above-entitled cause:

First. That the Court erred in sustaining the petition of claimant herein.

Second. That the Court erred in not finding the automobile subject to confiscation under Sec-

tion 3450, Revised Statutes of the United States of America.

Third. That the Court erred in dismissing plaintiff's libel.

Fourth. That the Court erred in releasing the seized property from custody, and returning same to the claimant.

Dated at Tucson, Arizona, this 12th day of October, 1923.

FREDERIC H. BERNARD,
United States Attorney for the District of Arizona.

[Endorsements]: Assignment of Errors. Filed Oct. 12, 1923. United States District Court for the District of Arizona. C. R. McFall, Clerk. By J. Lee Baker, Deputy Clerk.

Copy received this 12th day of October, 1923.

KINGAN, CAMPBELL & CONNER,
Attorneys for San Francisco Securities Corporation. [22]

In the District Court of the United States for the
District of Arizona.

No. L.-336—TUCSON.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORATION,
Defendants.

Petition for Writ of Error.

To the Honorable, The Judges of the District Court
of the United States, Within and for the Dis-
trict of Arizona.

The United States of America, plaintiff in the
above-entitled cause, conceiving itself aggrieved
and prejudiced in various orders and rulings
of the Court in said cause, and alleging divers
grievous and prejudicial errors by the Court in the
making of said orders and rulings and final judg-
ment herein, has filed an assignment of errors com-
plained of, and prays for an allowance of a writ of
error in said cause to the United States Circuit
Court of Appeals for the Ninth Circuit, and that
a transcript of the record and proceedings, duly
authenticated, may be sent to said Court of Ap-
peals.

THE UNITED STATES OF AMERICA,

Plaintiff.

By FREDERIC H. BERNARD,

United States Attorney for the District of Arizona.

[Endorsements]: Petition for Writ of Error.
Filed Oct. 12, 1923. United States District Court
for the District of Arizona. C. R. McFall, Clerk.
By J. Lee Baker, Deputy Clerk.

Copy received this 12th day of October, 1923.

KINGAN, CAMPBELL & CONNER,

Attorneys for San Francisco Securities Corpora-
tion. [23]

In the District Court of the United States for the
District of Arizona.

No. L.-336—TUCSON.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,

Defendants.

Order Allowing Writ of Error.

Upon the hearing of the petition for a writ of error herein, it appearing that an assignment of errors has been duly made and filed as required by law, it is:

ORDERED, that the writ of error be, and the same is hereby, allowed, to the end that the judgment of the Court heretofore entered herein may be reviewed in the United States Circuit Court of Appeals for the Ninth District.

October 12, 1923.

WM. H. SAWTELLE,
Judge.

[Endorsements]: Order Allowing Writ of Error.
Filed Oct. 12, 1923. United States District Court
for the District of Arizona. C. R. McFall, Clerk.
By J. Lee Baker, Deputy Clerk. [24]

In the Circuit Court of Appeals, Ninth Circuit.

No. LAW-336.

UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,

Defendants in Error.

Writ of Error (Copy).

United States of America,—ss.

The President of the United States, CALVIN
COOLIDGE, To the Honorable Judge of the
District Court of the United States for the
District of Arizona, GREETINGS:

Because in the record and proceedings, as also
in the rendition of the judgment of a plea which is
in the said District Court before you between the
United States of America, plaintiff in error, and
One Kissel Touring Automobile, and San Francisco
Securities Corporation, defendants in error, a mani-
fest error has happened to the damage of the United
States of America, plaintiff in error, as by said com-
plaint appears, and we being willing that error, if
any hath been, should be corrected, and full and
speedy justice be done to the parties aforesaid in
this behalf, do command you if judgment be therein
given, that under your seal you send the record and

proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you may have the same at San Francisco, in the State of California, where said Court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Court of Appeals may cause [25] further to be done therein to correct the error what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this the 12th day of October, A. D. 1923.

[Seal] C. R. McFALL,
Clerk of the United States District Court for the
District of Arizona.

Allowed this 12 day of October, A. D. 1923.

WM. H. SAWTELLE,
United States Judge. [26]

In the District Court of the United States for the
District of Arizona.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,

Defendants.

Return to Writ of Error (Copy).

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals for the Ninth Circuit of the United States a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said District Court, at my office, in the city of Tucson, Arizona, this 24th day of October, A. D. 1923.

[Seal]

C. R. McFALL,
Clerk of said Court.

[Endorsements]: Writ of Error. Filed Oct. 12, 1923. United States District Court for the District of Arizona. C. R. McFall, Clerk. By J. Lee Baker, Deputy Clerk. [27]

In the District Court of the United States for the
District of Arizona.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,

Defendants.

Citation on Writ of Error (Copy).

To the San Francisco Securities Corporation, De-
fendant in Error:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, California, on the 13th day of November, A. D. 1923, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States, for the District of Arizona, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. SAWTELLE, United States District Judge, District of Arizona, this 12th day of October, A. D. 1923.

WM. H. SAWTELLE,
United States District Judge.

I hereby, this 12 day of October, A. D. 1923, accept due personal service of the foregoing citation on behalf of the San Francisco Securities Corporation, defendant in error.

KINGAN, CAMPBELL & CONNER,
Attorneys for San Francisco Securities Corporation. [28]

[Endorsements]: Citation. Filed Oct. 12, 1923. United States District Court for the District of Arizona. C. R. McFall, Clerk. By J. Lee Baker, Deputy Clerk. [29]

In the District Court of the United States for the
District of Arizona.

No. 336—TUCSON.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORATION,
Defendants.

Praeipce for Transcript of Record.

To the Clerk of said Court:

Please prepare transcript on appeal to the United States Circuit Court of Appeals, Ninth Circuit, in the above-entitled cause, same to consist of the following:

1. Libel.
2. Writ of attachment and monition.
3. Order of publication.
4. Return to order of publication.
5. Answer and claim of San Francisco Securities Corporation.
6. Agreed statement of facts.
7. Opinion of the Court.
8. Order discharging automobile.
9. Assignment of errors.
10. Petition for writ of error.
11. Order allowing writ of error.
12. Writ of error.
13. Citation.
14. Praecipe for transcript.
15. Clerk's certificate.

UNITED STATES OF AMERICA,
Plaintiff.

FREDERIC H. BERNARD,
United States Attorney for the District of Arizona.
By JOHN W. WALKER,
Assistant United States Attorney.

[Endorsements]: Filed Oct. 17, 1923. United States District Court for the District of Arizona. C. R. McFall, Clerk. By J. Lee Baker, Deputy Clerk. [30]

In the District Court of the United States for the
District of Arizona.

No. L.-336—(TUCSON).

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,

Defendants in Error.

**Certificate of Clerk U. S. District Court to Tran-
script of Record.**

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the United States District Court for the District of Arizona, including the records, papers and files in the case of United States of America vs. One Kissel Touring Automobile and San Francisco Securities Corporation, Numbered L.-336 (Tucson) on the docket of said court.

I further certify that the attached pages, numbered One to 31, inclusive, contain a full, true and correct transcript of certain records and proceedings in said case, as called for in the praecipe for transcript filed in this case and made a part of the

transcript attached hereto, as the same appear from the originals of record and on file in my office as such clerk, in the city of Tucson, State and District aforesaid.

I further certify that the clerk's fees for preparing the transcript of this record amount to Nineteen and 40/100 Dollars (\$19/40), and the same have been charged to the United States as constructive earnings.

I further certify that the original writ of error and original citation issued in this cause are attached hereto and made a part hereof.

WITNESS my hand and the seal of said court, this 30th day of October, 1923.

[Seal]

C. R. McFALL,

Clerk.

By Agnes Borrego,

Deputy Clerk. [31]

In the Circuit Court of Appeals, Ninth Circuit.

No. LAW-336.

UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,

Defendants in Error.

Writ of Error (Original).

United States of America,—ss.

The President of the United States, CALVIN COOLIDGE, to the Honorable Judge of the District Court of the United States, for the District of Arizona, GREETINGS:

Because of the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you between the United States of America, plaintiff in error, and One Kissel Touring Automobile, and San Francisco Securities Corporation, defendants in error, a manifest error has happened to the damage of the United States of America, plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you may have the same at San Francisco, in the State of California where said Court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Court of Appeals may cause further to be done therein to correct the error what of right, and according to the

laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this the 12th day of October, A. D. 1923.

[Seal]

C. R. McFALL,
Clerk of the United States District Court for the District of Arizona.

Allowed this 12th day of October, A. D. 1923.

WM. H. SAWTELLE,
United States Judge.

In the District Court of the United States for the District of Arizona.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

ONE KISSEL TOURING AUTOMOBILE, SAN FRANCISCO SECURITIES CORPORATION,
Defendants.

Return to Writ of Error (Original).

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals for the Ninth Circuit of the United States a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix the seal of said District Court, at my office,

in the city of Tucson, Arizona, this 24th day of October, A. D. 1923.

[Seal]

C. R. McFALL,
Clerk of Said Court.

[Endorsed]: No. L.-336—Tucson. In the District Court of the United States for the District of Arizona. United States of America vs. One Kissel Touring Automobile, San Francisco Securities Corp. Writ of Error. Filed Oct. 12, 1923. United States District Court for the District of Arizona. C. R. McFall, Clerk. By J. Lee Baker, Deputy Clerk.

In the District Court of the United States for the
District of Arizona.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ONE KISSEL TOURING AUTOMOBILE, SAN
FRANCISCO SECURITIES CORPORA-
TION,

Defendants.

Citation on Writ of Error (Original).

To the San Francisco Securities Corporation, De-
fendant in Error:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco, California, on the 13th day of November, A. D. 1923, pursuant to a

writ of error filed in the clerk's office of the District Court of the United States, for the District of Arizona, wherein the United States of America, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. SAWTELLE, United States District Judge, District of Arizona, this 12th day of October, A. D. 1923.

WM. H. SAWTELLE,
United States District Judge.

I hereby, this 12th day of October, A. D. 1923, accept due personal service of the foregoing citation on behalf of the San Francisco Securities Corporation, defendant in error.

KINGAN, CAMPBELL & CONNER,
Attorneys for San Francisco Securities Corporation.

[Endorsed]: No. L.-336—Tucson. In the District Court of the United States for the District of Arizona. United States of America vs. One Kissel Touring Automobile, San Francisco Securities Corp. Citation. Filed Oct. 12, 1923. United States District Court for the District of Arizona. C. R. McFall, Clerk. By J. Lee Baker, Deputy Clerk.

[Endorsed]: No. 4127. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Plaintiff in Error, vs. One Kissel Touring Automobile, and San Francisco Securities Corporation, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Arizona.

Filed November 1, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

